

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON
AT SEATTLE

OMEGA MORGAN, INC.,

Plaintiff,

v.

JAROD AUSTIN HEELY, et al.,

Defendants.

No. C14-556RSL

ORDER GRANTING IN PART
DEFENDANTS' MOTION FOR
PARTIAL SUMMARY JUDGMENT

I. INTRODUCTION

This matter comes before the Court on defendants' "Motion for Partial Summary Judgment." Dkt. #25. Summary judgment is appropriate if, viewing the evidence in the light most favorable to the nonmoving party, "the movant shows that there is no genuine dispute as to any material fact and the movant is entitled to judgment as a matter of law." Fed. R. Civ. P. 56(a); L.A. Printex Indus., Inc. v. Aeropostale, Inc., 676 F.3d 841, 846 (9th Cir. 2012). The moving party "bears the initial responsibility of informing the district court of the basis for its motion." Celotex Corp. v. Catrett, 477 U.S. 317, 323 (1986). It need not "produce evidence showing the absence of a genuine issue of material fact" but instead may discharge its burden under Rule 56 by "pointing out . . . that there is an absence of evidence to support the nonmoving party's case." Id. at 325. Once the moving party has satisfied its burden, it is entitled to summary judgment if the non-moving party fails to designate "specific facts showing

1 that there is a genuine issue for trial.” Id. at 324. “The mere existence of a scintilla of evidence
2 in support of the non-moving party’s position is not sufficient”; the opposing party must present
3 probative evidence in support of its claim or defense. Arpin v. Santa Clara Valley Transp.
4 Agency, 261 F.3d 912, 919 (9th Cir. 2001); Intel Corp. v. Hartford Accident & Indem. Co., 952
5 F.2d 1551, 1558 (9th Cir. 1991). “An issue is ‘genuine’ only if there is a sufficient evidentiary
6 basis on which a reasonable fact finder could find for the nonmoving party.” In re Barboza, 545
7 F.3d 702, 707 (9th Cir. 2008) (internal citations omitted).

8 Having reviewed the memoranda, declarations, and exhibits submitted by the parties, and
9 taking the evidence in the light most favorable to plaintiff, the Court finds as follows:

10 **II. BACKGROUND**

11 Plaintiff employed defendants on an at-will basis until defendants left the company on
12 March 31, 2014. Heely Decl. (Dkt. #26) ¶ 11; Hill Decl. (Dkt. #27) ¶ 9. Defendant Heely
13 initially started working for plaintiff in 2000. Heely Decl. (Dkt. #26) ¶ 3. Defendant Heely
14 worked for plaintiff for several years before leaving in early 2011. Heely Decl. (Dkt. #26) ¶ 7.
15 He was rehired in late September 2011. Id.; Ryan Decl. (Dkt. #36) ¶ 16. At some point after his
16 rehiring, defendant Heely was given an employee manual outlining plaintiff’s policies. On
17 October 10, 2011, he signed an acknowledgment form stating that he agreed to follow plaintiff’s
18 policies, including “maintain[ing] in confidence all proprietary information.” Ryan Decl. (Dkt.
19 #36) Ex. D. Defendant Hill was hired by plaintiff in 2003. Ryan Decl. (Dkt. #36) ¶ 17. On
20 January 25, 2006, she signed an acknowledgment form regarding plaintiff’s policies in the
21 employment manual, including plaintiff’s confidentiality policy. Ryan Decl. (Dkt. #36) Ex. E.

22 Before they left plaintiff’s employ, defendants began setting up their own business in the
23 same industry. Heely Decl. (Dkt. #26) ¶ 10; Hill Decl. (Dkt. #27) ¶ 8. Defendants’ new
24 business competed with plaintiff and obtained business from at least one of plaintiff’s clients.
25 This included soliciting and contracting with SGL Automotive Carbon Fibers LLC (SGL) for
26

1 work that was originally given to plaintiff. Ryan Decl. (Dkt. #36) Ex. F.

2 Plaintiff brought suit alleging, inter alia, that defendants misappropriated confidential
3 information, misused company property, and interfered with its contracts. Compl. (Dkt. #1).
4 Defendants now move for partial summary judgment. Motion (Dkt. #25).

5 **III. ANALYSIS**

6 Defendants seek summary judgment on plaintiff's claims for breach of contract and
7 breach of the implied covenant of good faith and fair dealing. In addition, defendants contend
8 that the Washington Uniform Trade Secrets Act (WUTSA), RCW 19.108.010 et seq., preempts
9 plaintiff's claims for conversion; violation of the Computer Fraud and Abuse Act (CFAA), 18
10 U.S.C. § 1030; violation of the Stored Communications Act (SCA), 18 U.S.C. § 2701 et seq.;
11 breach of fiduciary duty and the duty of loyalty; breach of confidential relationship; and
12 intentional interference with a contractual relationship and business expectancy.

13 **A. Breach of Contract**

14 Defendants assert that they did not enter into a contract with plaintiff for the protection of
15 confidential information. They first argue that the confidentiality provisions are spelled out in
16 the employee manual, which did not constitute a binding contract. Motion (Dkt. #25) at 5–6.
17 Second, they argue that their signed acknowledgments relating to the employee manual
18 provisions are not enforceable due to lack of consideration.¹ Id. at 6–7.

19 The Court rejects defendants' first argument. Washington courts have recognized that an
20 employee policy manual may create binding obligations on employers and employees in two
21 situations: (1) when the parties agree to be bound to the policies or (2) when the employee

22 ¹ Defendants advance new arguments in their reply to support their motion for summary
23 judgment on the breach of contract claim. These include the contention that plaintiffs were not
24 employed by defendant and that defendant did not create the employee manual. Reply (Dkt. #37) at 2.
25 The Court will not consider these claims or the declaration that accompanies plaintiffs' reply. See
26 Bazuaye v. I.N.S., 79 F.3d 118, 120 (9th Cir. 1996) ("Issues raised for the first time in the reply brief are
waived."). It is especially inappropriate to threaten to file a motion to seek Rule 11 sanctions as counsel
for defendants did at the close of his reply brief, Dkt. #37 at 12.

1 justifiably relies on a promise of specific treatment contained in a policy manual. Duncan v.
2 Alaska USA Fed. Credit Union, Inc., 148 Wn. App. 52, 60 (2008). Only the first scenario is
3 implicated in the present case. The Washington State Supreme Court has held that “an employee
4 and employer can contractually obligate themselves concerning provisions found in an employee
5 policy manual and thereby contractually modify the [employment] relationship.” Thompson v.
6 St. Regis Paper Co., 102 Wn.2d 219, 228–29 (1984). Here, both defendants signed separate
7 acknowledgments that they would specifically abide by plaintiff’s confidentiality policy. Ryan
8 Decl. (Dkt. #36) Exs. D, E. The Court rejects defendants’ argument that the employee manual
9 could not create a binding obligation because the manual contained a disclaimer. Because
10 defendants signed separate formal acknowledgments agreeing to be bound to plaintiff’s policies,
11 defendants’ acknowledgments may operate as contracts in Washington.

12 Defendants’ also argue that the acknowledgments themselves cannot operate as binding
13 contracts because they lack independent consideration. “The general rule in Washington is that
14 contracts signed when an employee is first hired, such as non-competition agreements,
15 arbitration clauses, and confidentiality provisions, are supported by consideration.” E.E.O.C. v.
16 Fry’s Electronics, Inc., No. C10-1562RSL, 2011 WL 666328, at *1 (W.D. Wash. Feb. 14, 2011)
17 (citing Labriola v. Pollard Grp., Inc., 152 Wn.2d 828, 834 (2004)). At the time of first hiring,
18 consideration exists because the parties exchange promises and obligations: “the employer
19 promises to hire the employee in exchange for the employee’s promise to comply with policies,
20 procedures, and terms set forth in the contract.” Int’l Paper Co. v. Stuit, No. C11-2139JLR,
21 2012 WL 1857143, at *3 (W.D. Wash. May 21, 2012). A contract entered into after
22 employment or a modification of an existing employment contract will be enforced if it is
23 supported by independent, additional consideration. Labriola, 152 Wn.2d at 834. “Independent
24 consideration involves new promises or obligations previously not required of the parties” and
25 “may include increased wages, a promotion, a bonus, a fixed term of employment, or perhaps
26 access to protected information.” Id.

1 Defendant Heely worked for plaintiff for several years before leaving the company in
2 early 2011. Heely Decl. (Dkt. #26) ¶ 7. He was rehired in late September 2011. Id. ¶ 8. On
3 October 10, 2011, he signed a form acknowledging receipt of plaintiff's employee manual and
4 agreeing to abide by the confidentiality policy. Ryan Decl. (Dkt. #36) Ex. D. Otherwise valid
5 non-compete agreements are enforceable if signed "when he or she is first hired." Labriola, 152
6 Wn.2d at 834. It is not usual for an employee to continue to finalize his employment documents
7 in the days after he begins work. See Nw. Mobile Servs., L.L.C. v. Schryver Med. Sales &
8 Mktg., No. C06-5227RBL, 2006 WL 1799620, at *2 (W.D. Wash. June 28, 2006) (holding non-
9 compete agreement signed six days after employment began was "signed when first hired").
10 Here, defendant Heely signed an acknowledgment agreeing to "maintain in confidence all
11 proprietary information." Ryan Decl. (Dkt. #36) Ex. D. Given that defendant Heely signed this
12 form during the first two weeks of his employment, the Court cannot as a matter of law find that
13 Heely did not sign the acknowledgment when he was "first hired." Accordingly, this Court
14 denies defendants' request for summary judgment with respect to defendant Heely.

15 Ms. Hill was hired in 2003. Ryan Decl. (Dkt. #36) ¶ 17. Plaintiff presents a signed
16 acknowledgment form from 2006 to support its breach of contract claim. Ryan Decl. (Dkt. #36)
17 Ex. E. The only evidence that the Court can consider under Fed. R. Civ. P. 56(c) comes in the
18 form of agreements signed after defendant's employment commenced.² Thus, the
19 acknowledgment required independent consideration to be enforceable. Plaintiff has not

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21 ² The Court cannot consider plaintiff's contention that oral agreements at the time of hiring
22 included confidentiality agreements because plaintiff has failed to provide admissible evidence to
23 support this claim. See Fed. R. Civ. P. 56(c)(4). Charles Ryan, plaintiff's CFO, states that defendants
24 were "verbally instructed and admonished by their Omega managers to maintain the confidentiality of
25 Omega confidential and proprietary information. Heely and Hill agreed to maintain this information in
26 confidence." Ryan Decl. (Dkt. #36) ¶ 18. However, Ryan does not establish the requisite basis of
personal knowledge as he does not state that he was one of defendants' managers who gave the
instruction nor that he witnessed the agreement. Furthermore, defendants deny entering into oral
confidentiality agreements at that time. Accordingly, Ryan has not established personal knowledge of
the oral agreements made between plaintiff and defendants.

1 supplied the Court with any evidence of independent consideration as to defendant Hill.
2 Accordingly, the acknowledgment form does not constitute an enforceable contract. The Court
3 grants summary judgment on this issue with regard to defendant Hill.

4 **B. Breach of the Implied Covenant of Good Faith and Fair Dealing**

5 Washington courts recognize “the obligation of good faith in the performance of express
6 terms in employment contracts.” Barrett v. Weyerhaeuser Co. Severance Pay Plan, 40 Wn. App.
7 630, 636 n.6 (1985). However, Washington law does not “endorse the view that an implied
8 covenant of good faith and fair dealing limits an employer’s discretion in terminating an at will
9 employee, nor that a ‘bad faith’ discharge is actionable in tort.” Id. (citing Thompson, 102
10 Wn.2d at 231–33).

11 Defendants assert that their at-will employment status means that their employment
12 contracts cannot contain implied covenants of good faith and fair dealing as a matter of
13 Washington law. Defendants cite a number of cases from this District to support this
14 proposition, all of which cite the Washington State Supreme Court’s decision in Thompson. The
15 holding in Thompson is not as broad as defendants claim. Rather, it stands for the proposition
16 that an employer is not limited by an implied covenant of good faith and fair dealing in
17 terminating an at-will employee. Thompson, 102 Wn.2d at 227–33. Thompson does not stand
18 for the proposition that an at-will employee, while still employed, is free from a covenant of
19 good faith and fair dealing.

20 In this case, defendants were hired based on oral agreements. Heely Decl. (Dkt. #26) ¶ 3;
21 Hill Decl. (Dkt. #27) ¶ 3. The parties have not specified the express terms of the oral
22 agreements. However, at this stage of the proceedings, the existence of an agreement is
23 sufficient to indicate the existence of an implied covenant of good faith and fair dealing. As an
24 agreement for at-will employment, either party could have terminated the employment
25 relationship at any time. Thompson, 102 Wn.2d at 233. While the relationship existed, the
26 express terms of the oral employment contracts between the parties were accompanied by an

1 implied covenant of good faith and fair dealing under Washington law. Consequently, based on
 2 the incomplete record of what those terms were, the Court denies summary judgment as to this
 3 claim.

4 **C. Preemption of Other Claims by the Washington Uniform Trade Secrets Act**

5 The Washington Uniform Trade Secrets Act (WUTSA) “displaces conflicting tort,
 6 restitutionary, and other law of this state pertaining to civil liability for misappropriation of a
 7 trade secret.” RCW 19.108.900(1). The Act does not displace “[c]ontractual or other civil
 8 liability or relief that is not based upon misappropriation of a trade secret.” RCW
 9 19.108.900(2)(a). Accordingly, “[a] plaintiff ‘may not rely on acts that constitute trade secret
 10 misappropriation to support other causes of action.’” Thola v. Henschell, 140 Wn. App. 70, 82
 11 (2007) (quoting Ed Nowogroski Ins., Inc. v. Rucker, 88 Wn. App. 350, 358 (1997), aff’d, 137
 12 Wn.2d 427 (1999)). In order to analyze WUTSA preemption, Washington Courts “(1) assess the
 13 facts that support the plaintiff’s civil claim; (2) ask whether those facts are the same as those that
 14 support the plaintiff’s [WUTSA] claim; and (3) hold that the [WUTSA] preempts liability on the
 15 civil claim unless the common law claim is factually independent from the [WUTSA] claim.”
 16 Id. “[P]roper application of this three-step analysis precludes duplicate recovery for a single
 17 wrong.” Id.

18 Plaintiff bases its WUTSA claim on contentions that defendants “have openly
 19 misappropriated Omega’s trade secret information, including copying and taking with them
 20 confidential customer lists and other data acquired during their employment with Omega, for the
 21 improper purpose of furthering” their new business. Response (Dkt. #35) at 13.

22 Defendants argue that plaintiff’s WUTSA claim preempts plaintiff’s claims for
 23 conversion, violation of the Computer Fraud and Abuse Act (CFAA), violation of the Stored
 24 Communications Act (SCA), breach of fiduciary duty and the duty of loyalty, breach of
 25 confidential relationship, and intentional interference with a contractual relationship and
 26 business expectancy. Motion (Dkt. #25) at 8–12. Defendants argue that plaintiff presents the

1 same facts in support of its WUTSA claim and these additional claims. Id.

2 **1. Conversion**

3 Conversion is the “unjustified, willful interference with a chattel which deprives a person
4 entitled to the property of possession.” In re Marriage of Langham & Kolde, 153 Wn.2d 553,
5 564 (2005) (citation omitted). The term “chattel” encompasses “both tangible and intangible
6 goods, such as corporate property.” Lang v. Hougan, 136 Wn. App. 708, 718 (2007).

7 Plaintiff argues that its conversion claims are not preempted by WUTSA because the
8 defendants “used and interfered with Omega property—including Omega computers, telephones,
9 servers and physical files—without authorization from Omega in order to form their competing
10 business.” Response (Dkt. #35) at 17. Because this misuse of company property was
11 independent of the misuse of plaintiff’s trade secret information, plaintiff argues it has
12 established a cause of action separate from and independent of its WUTSA claims. Id. The
13 Court rejects plaintiff’s argument. Plaintiff failed to plead conversion of its computers and
14 telephones in its complaint and cannot raise these arguments now. Furthermore, even if
15 plaintiffs had pled this conduct in its complaint, plaintiffs have failed to show how defendants’
16 actions interfered with plaintiff’s possessory interest in its phones and computers.

17 Plaintiff’s complaint alleges only that defendants unlawfully interfered with plaintiff’s
18 possessory interest in its computer files. Compl. (Dkt. #1) at ¶¶ 55–61. Plaintiff pleads that
19 defendants converted its computer files by improperly sending files to defendants’ personal
20 email addresses, deleting files, and taking files with them when they left plaintiff’s employ. Id.
21 Plaintiff supports this allegation with the Declaration of Charles Ryan, who states that
22 defendants used plaintiff’s customer lists, customer contact information, and rate sheets. Ryan
23 Decl. (Dkt. #36) at ¶ 29. Plaintiff has not shown that the use of these documents is factually
24 distinct from the misuse of “customer lists and other data” upon which plaintiff bases its
25 WUTSA claims. As plaintiff has failed to specifically identify any documents that defendants
26 improperly used that plaintiffs do not also claim are protected as trade secrets, plaintiff has not

1 met its burden to show its conversion claim is not preempted. Therefore, the Court grants
2 defendants' motion for summary judgment.

3 **2. Computer Fraud Claims**

4 The SCA "provides a civil action for someone who intentionally accesses an electronic
5 communication service either without authorization or in excess of authorization and thereby
6 obtains access to an electronic communication stored on that service." 3BA Int'l LLC v.
7 Lubahn, No. C10-829RAJ, 2012 WL 2317563, at *7 (W.D. Wash. June 18, 2012) (citing 18
8 U.S.C. § 2701(a)). The CFAA provides a cause of action when someone "knowingly and with
9 intent to defraud, accesses a protected computer without authorization, or exceeds authorized
10 access" 18 U.S.C. § 1030(a)(4).

11 Plaintiff states that it has an independent cause of action under these statutes because
12 defendants (1) used company servers to copy confidential information and (2) deleted files on
13 the company computer system. Response (Dkt. #35) at 18–19. Plaintiff supports this allegation
14 with the Declaration of Charles Ryan, who states that a forensic analysis revealed that
15 defendants copied files and "wiped" their company computers before returning them to plaintiff.
16 Ryan Decl. (Dkt. # 36) ¶¶ 29–30. The Court find enough in Ryan's declaration to support an
17 evidentiary basis to raise a fact issue here that files were copied or computers wiped.

18 Looking to the evidence put forth in the Declaration of Charles Ryan, this Court finds that
19 plaintiff's claim is, in part, preempted by WUTSA. Plaintiff's allegations that defendants used
20 company servers to copy confidential information rests on the same factual basis as plaintiff's
21 WUTSA claims. Specifically, plaintiff bases its WUTSA claim on the factual allegation that
22 defendants "have openly misappropriated Omega's trade secret information, including copying
23 and taking with them confidential customer lists and other data acquired during their
24 employment with Omega" Response (Dkt. #35) at 13. Because plaintiff has failed to
25 establish independent factual grounds, plaintiff's claims under the SCA and the CFAA based on
26 the unauthorized copying of confidential files are preempted by WUTSA. However, plaintiff's

1 allegation that the defendants “wiped” their computers of information prior to terminating their
 2 employment with plaintiff, is supported by an independent factual basis. Plaintiff does not
 3 allege that the deletion of files constitutes a misappropriation of plaintiff’s trade secrets. Thus,
 4 the Court denies summary judgment on plaintiff’s claims under the SCA and the CFAA for
 5 unauthorized deletion of files.

6 **3. Breach of Fiduciary Duty and the Duty of Loyalty**

7 “During the period of his or her employment, an employee is not ‘entitled to solicit
 8 customers for [a] rival business . . .’ or to act in direct competition with his or her employer’s
 9 business.” Kieburtz & Associates, Inc. v. Rehn, 68 Wn. App. 260, 265 (1992) (quoting
 10 Restatement (Second) of Agency § 393 cmt. e (1958)). In this case, plaintiff alleges that
 11 defendants, while employees, solicited plaintiff’s current customers for their new business.
 12 Dkt. #35 at 15–16. This allegation is supported by facts independent of the WUTSA claim,
 13 including the fact that defendants started their new business on February 15, 2014, but left the
 14 employ of plaintiff on March 31, 2014. Heely Decl. (Dkt. #26) ¶ 11; Hill Decl. (Dkt. #27) ¶ 9.
 15 Further, plaintiff presents evidence that defendants solicited and received the business of one of
 16 plaintiff’s clients, SGL, during defendants’ employment. Ryan Decl. (Dkt. #36) Ex. F.
 17 Therefore, the Court denies summary judgment as to plaintiff’s breach of the duty of loyalty
 18 claim. Since plaintiff has not continued to assert a breach of fiduciary duty, the Court grants
 19 summary judgment as to this claim.

20 **4. Breach of Confidential Relationship**

21 “In Washington, . . . a duty of confidentiality claim can be brought independently of a
 22 UTSA claim.” LaFrance Corp. v. Werttemberger, No. C07-1932Z, 2008 WL 5068653, at *3
 23 (W.D. Wash. Nov. 24, 2008). Plaintiff has placed facts in the record that support its contention
 24 that defendant Heely, by virtue of signing the acknowledgment upon rehire, owed plaintiff a
 25 duty of confidentiality. That confidential relationship protected information that was not subject
 26 to protection as a trade secret, such as information about customers. See Ryan Decl. (Dkt. #36)

1 Ex. A. Plaintiff argues that its claims for breach of a confidential relationship are independent
 2 from its WUTSA claims because the defendants were provided access to information about
 3 customers that did not amount to trade secrets. Id. However, plaintiff has again failed to specify
 4 any facts indicating that defendant Heely misused or disclosed information that plaintiffs have
 5 not also argued is legally protected as a trade secret. Thus, to the extent plaintiff states a claim
 6 against defendant Heely for the breach of a confidential relationship that is based on the
 7 unauthorized disclosure of confidential information that plaintiff argues is a legally-protected
 8 trade secret, this claim is preempted.

9 As to defendant Hill, this Court finds that plaintiff has produced no evidence of a
 10 confidential relationship. See Section III.A. Washington courts have recognized that “[t]he
 11 nature of the employment relationship imposes a duty on employees and former employees not
 12 to use or disclose the employer’s trade secrets.” Ed Nowogroski Ins., Inc. v. Rucker, 137 Wn.2d
 13 427, 439 (1999). However, any claim based on the disclosure or use of plaintiff’s trade secrets
 14 would be preempted by WUTSA. Plaintiff has put forth no evidence that defendant Hill had a
 15 confidential relationship with plaintiff not to disclose information that was not legally-protected
 16 as a trade secret. Accordingly, the Court grants summary judgment on plaintiff’s breach of
 17 confidential relationship claim as to both defendants.

18 **5. Intentional Interference with a Contractual Relationship and Business Expectancy**

19 A plaintiff must satisfy five elements to put forth a claim for tortious interference with a
 20 business expectancy: (1) the existence of a valid contractual relationship or business expectancy;
 21 (2) that defendants had knowledge of that relationship; (3) an intentional interference inducing
 22 or causing a breach or termination of the relationship or expectancy; (4) that defendants
 23 interfered for an improper purpose or used improper means; and (5) resultant damages.
 24 Westmark Dev. Corp. v. City of Burien, 140 Wn. App. 540, 557 (2007). Plaintiff has offered
 25 evidence independent of its WUTSA claim to support this claim, namely in the “change order”
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1 form that demonstrates defendants' adverse impact on plaintiff's business relationship with SGL.
2 Ryan Decl. (Dkt. #36) Ex. F. This evidence does not support a trade secret claim, but rather
3 supports the allegation that defendants interfered with plaintiff's contract with SGL. Therefore,
4 the Court denies summary judgment as to this claim.

5 **IV. CONCLUSION**

6 For all of the foregoing reasons, defendants' motion for summary judgment (Dkt. #25) is
7 GRANTED in part. Summary judgment is GRANTED on the following claims to defendant
8 Hill: breach of contract, conversion, violation of the Stored Communications Act for
9 unauthorized file copying, violation of the Computer Fraud and Abuse Act for unauthorized file
10 copying, breach of confidential relationship, and breach of fiduciary duty. Summary judgment is
11 GRANTED on the following claims to defendant Heely: conversion, violation of the Stored
12 Communications Act for unauthorized file copying, violation of the Computer Fraud and Abuse
13 Act for unauthorized file copying, breach of confidential relationship, and breach of fiduciary
14 duty.

15 Summary judgment is DENIED with regard to the following claims against defendant
16 Hill: breach of the implied covenant of good faith and fair dealing, violation of the Stored
17 Communications Act for unauthorized file deletion, violation of the Computer Fraud and Abuse
18 Act for unauthorized file deletion, breach of the duty of loyalty, and intentional interference with
19 a contractual relationship and business expectancy. Summary judgment is DENIED with regard
20 to the following claims against defendant Heely: breach of contract, breach of the implied
21 covenant of good faith and fair dealing, violation of the Stored Communications Act for
22 unauthorized file deletion, violation of the Computer Fraud and Abuse Act for unauthorized file
23 deletion, breach of the duty of loyalty, and intentional interference with a contractual
24 relationship and business expectancy.

1 Dated this 29th day of April, 2015.

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4 Robert S. Lasnik
5 United States District Judge
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